

**PT 99-20**

**Tax Type:     PROPERTY TAX**  
**Issue:         Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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BURGER BENEDICT POST #573	)	Docket #	95-57-80
AMERICAN LEGION	)		
Applicant	)	Legal Description:	
	)	L 1 and E 40' L2 Blk 12	
v.	)	Original Town of McLean	
	)		
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Ralph Turner, HARTWEG, MUELLER, TURNER, DRAZEWSKI & WOOD, P.C., for Burger Benedict Post #573 of the American Legion.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue (hereinafter referred to as the Department), Springfield, Illinois, on June 17, 1998, to determine whether or not McLean County Parcel "Lot one and the East 40 feet of Lot two Block twelve of the original town of McLean" qualified for exemption during the 1995 assessment year.

Harry Heising, Adjutant of Burger Benedict Post #573 of the American Legion, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1995 assessment year; secondly, whether the applicant is a veterans' organization; and lastly, whether the parcel was used by the applicant for charitable purposes that were also patriotic and civic during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during

the entire 1995 year. It is also determined that the applicant is a veterans' organization. Finally, it is determined that the applicant did not use the parcel for purposes that were charitable and also patriotic and civic during the 1995 assessment year. **IT IS RECOMMENDED THAT THE PARCEL REMAIN ON THE TAX ROLLS FOR THE 1995 TAX YEAR AND BE ASSESSED TO THE APPLICANT, THE OWNER THEREOF.**

Findings of Fact:

1. The jurisdiction and position of the Department that a McLean County Parcel Index No. 23-26-35-436-003 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 10)

2. On May 8, 1996, the Department received a property tax exemption application from the McLean County Board of Review for Permanent Parcel Index No. 23-26-35-436-003. The applicant had submitted the request, and the board recommended granting the exemption for the 1995 assessment year. The Department assigned Docket No. 95-57-80 to the application. (Dept. Grp. Ex. No. 2)

3. On October 18, 1996, the Department denied the requested exemption application finding that the property was not in exempt ownership and use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices in Springfield, Illinois, on June 17, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject parcel by several warranty deeds. One was dated June 2, 1947, and contained a reversionary right in the grantor if the applicant failed to use the premises for the purposes of a club and general meeting place for the applicant. A second deed was dated May 30, 1960. The third was dated October 30, 1962. There was confusion as to the parcel index number at issue so it was decided to use the legal description contained on the

application. (Dept. Grp. Ex. No. 2 pp. 2, 3, 6, & 8)

7. The applicant's charter was issued under the Constitution of the American Legion on February 10, 1921. (Applicant's Ex. J)

8. The applicant was incorporated under the provisions of the General Not for Profit Corporation Act of the state of Illinois on November 12, 1952. The purpose clause states:

For God and country, we associate ourselves together for the following purposes: To uphold and defend the Constitution of the United States of America; to maintain law and order; to foster and perpetuate one hundred percent Americanism; to preserve the memories and incidents of our association in the great wars; to inculcate a sense of individual obligation to the community, state and nation; to combat the autocracy of both the classes and the masses; to make right the master of might; to promote peace and good will on earth; to safeguard and transmit to posterity the principles of justice, freedom and democracy; to consecrate and sanctify our comradeship by our devotion to mutual helpfulness. (Dept. Grp. Ex. No. 2 pp. 11-14)

9. The subject parcel contains three buildings. Building No. 1 contains 1,423 square feet including a basement. It is where the applicant has meetings and programs. Building No. 2 is comprised of 305 square feet and is a storage area for hospital equipment. Building No. 3 is 400 square feet and contains cooking equipment. The total area of the parcel at issue is 12,540 square feet. (Dept. Grp. Ex. No. 2 pp. 1, 10)

10. Building No. 1 is a one-story structure, the first floor of which contains a large conference room, restrooms, a kitchen, a closet, and a porch. It is used as a meeting place for the applicant, its auxiliary, the Boy Scouts of America, and the Sons of the American Legion. Various groups have been granted permission to use the building if needed including the American Red Cross and Civil Defense. The Mount Hope-Funks Grove Fire Department uses the building for training. The building is also used for programs including the American Legion School Award Program, a children's Christmas program, and programs that honor veterans. The basement has a large central room that contains a pool table, fireplace, and chairs. Also in the basement are a restroom and a furnace room. Flags are stored in the basement. (Dept. Ex. No. 2 p. 15; Applicant's Ex. E, F, G, H & I; Tr. p. 12-18, 36)

11. The applicant conducts its monthly meetings in building No. 1. The auxiliary also

has monthly meetings there. The boy scouts were not charged rent for the events held in building No. 1. The building was not rented to any person or group in 1995 (Tr. pp. 19-20)

12. The applicant does not have a bingo license, pull tab license, liquor license, nor is the kitchen used for dinners held in the building. (Tr. pp. 20-21)

13. Building No. 2 contains hospital equipment that the applicant makes available to the community at no charge. (Dept. Ex. No. 2 pp. 22-23; Tr. pp. 18, 29-33)

14. Building No. 3 contains two cooking grills that are available for activities of the applicant, other veteran's organizations, civic organizations, or church groups. (Dept. Ex. No. 2 pp. 31-32; 36-38)

15. The applicant's income in 1995 was \$5,957.53. The income is derived from donations, a percentage of the dues it collects, and the Harvest Festival. The applicant sponsors the Harvest Festival, which is a homecoming affair for the Village of McLean. The applicant gets 20% of the proceeds from the carnival rides. The applicant provides a meal for sale in the center of the town during the event. The auxiliary sponsors a second meal. (Applicant's Ex. A; Tr. pp. 22-23; 33-35)

16. In 1995, applicant's expenses of \$5,738.69 included money for grave markers, Boy's State, the Food Pantry, Christmas candy, flags, library books, school awards, and a donation to the boy scouts. (Applicant's Ex. A; Tr. p. 29)

17. On Memorial Day the applicant visits the two cemeteries in the area and performs ceremonies related to veterans and their involvement in the various wars. Similar activities are performed on Flag Day and Veterans Day. The applicant conducts military funerals for any veteran that wishes for one, whether that person is a member of applicant's post or not. (Tr. pp. 24- 27)

18. The applicant sponsors a Boy Scout troop, an honors program for four eighth-grade students each year, and supports a young man in the Boy's State program. (Tr. p. 28-29)

19. I take administrative notice of the fact that the Department granted an exemption, except for reversionary rights, pursuant to Docket No. 50-140, to the applicant for the portion of

the subject parcel conveyed on June 2, 1947. The basis of the decision was “[I]n opinion File No.10, dated February 27, 1953, the Attorney General of the State of Illinois held that property used by a recognized organization of veterans is exempt within the provision of Section 500, Chapter 120, Illinois Revised Statutes 1951<sup>1</sup>.” (Dept. Ex. No. 2 pp. 4-5)

20. I also take administrative notice of the fact that the Department, pursuant to Docket No. 61-406, granted an exemption to the applicant for the portion of the subject parcel conveyed on June 28, 1960. (Dept. Ex. No. 2 pp. 6-7)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

PURSUANT TO THE AUTHORITY GRANTED BY THE CONSTITUTION, THE LEGISLATURE HAS ENACTED STATUTORY EXEMPTIONS FROM PROPERTY TAX. THE PROVISION AT ISSUE IS FOUND AT 35 ILCS 200/15-145 AND STATES, ALL PROPERTY OF VETERANS' ORGANIZATIONS USED EXCLUSIVELY FOR CHARITABLE, PATRIOTIC AND CIVIC PURPOSES IS EXEMPT.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one whom asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the

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<sup>1</sup> The current exemption for veterans' organizations is found at 35 ILCS 200/15-145.

exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

REGARDING THE PARCEL AT ISSUE, it is necessary to understand the historical interpretation of property tax exemptions for veterans' organizations. On February 27, 1953, the Attorney General of the state of Illinois issued an opinion<sup>2</sup> that the Sycamore Veteran's Home Association qualified for a property tax exemption. At that time, there was no specific provision regarding an exemption for a veterans' organization<sup>3</sup> and the opinion was rendered under the charitable exemption. The Director of the Department of Revenue had requested the opinion of the Attorney General regarding the usage of the property by the Sycamore Veteran's Home Association (hereinafter the "Association"). The association had used the property as a memorial home for veterans of World War I and II and as a meeting place of the Sycamore Post of the Veterans of Foreign Wars and the Sycamore Post of the American Legion. In addition, the building was being used for blood bank drives and other community events as well as recreational uses by the members of the posts involved. The opinion of the attorney general was that the property was exempt as used for charitable purposes.

In 1956, subsequent to the Attorney General's decision, the Illinois Supreme Court in Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 279 (1956) *rehearing denied* (hereinafter referred to as "Rogers Park") addressed the above opinion of the Attorney General and other opinions by stating:

Plaintiff contends that its property is exempt from taxation for 1952 and subsequent years and should be exempt for 1948 and subsequent years. In support of this proposition, plaintiff argues that the Attorney General of the State of Illinois and the State's Attorney of Cook County have issued opinions holding property of American Legion Posts, Veterans' of Foreign Wars, and veterans' associations to be exempt from taxation. The assessor of Cook county, acting pursuant to these legal opinions, formulated a policy whereby he marked exempt the property of American Legion Posts when the property was used exclusively for Legion purposes. The assessor, pursuant to said policy, aforesaid, designated the real estate of plaintiff exempt for 1952

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<sup>2</sup> SEE FINDING OF FACT NO. 19.

<sup>3</sup> THE STATUTE THAT WAS CONSTRUED WAS FOUND AT CHAPTER 120, PARAGRAPH 500, ILLINOIS REVISED STATUTES, 1951 . (PAGE 43 OF THE OPINION.)

and subsequent years. The opinions of the Attorney General of the State of Illinois and several State's Attorneys of the State of Illinois, while persuasive, are not binding upon this court. Nor is the action of assessing bodies binding on this court with respect to the assessment of taxes. *Citations omitted.* Courts have no power to create exemption from taxation by judicial construction. Such authority rests in the legislature. *Id.* at 292.

The Supreme Court went on to hold that the use of the property and ownership by Rogers Park Post No. 108 of the American Legion did not entitle the applicant to an exemption from real estate taxation pursuant to the section granting exemptions for charitable entities. Post No. 108 used the property for its meetings and had a canteen for its members. The premises were also used by the auxiliary and junior auxiliary for their meetings, and by the Boy Scouts and other charitable and religious organizations for meetings, dances, and weddings. Donations were accepted to cover the costs of maintenance and clean up.

The Court found that Rogers Park Post No. 108 was not a charitable organization and that its use of the subject parcel was not exclusively for charitable purposes. The Court stated that "It is apparent from the record before us that the dominant use to which real estate of plaintiff is put is that of a private club rather than the headquarters for the dispensation of charitable relief." *Id.* at 291-292

The Revenue Act was changed in 1959 to add section 500.18<sup>4</sup> to the exemptions from property tax. That exemption provision provided:

**500. Property exempt from taxation.** §19. All property described in Sections 19.1 to 19.19 inclusive, to the extent therein limited, shall be exempt from taxation. . . . § 19.18 All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes.

The Illinois Supreme Court was given an opportunity to interpret the successor to this statute in THE CASE OF NORTH SHORE POST NO. 21 V. KORZEN, 38 ILL.2D 231 (1967). IN THAT CASE, THE COURT HELD THAT THE PREDECESSOR STATUTE TO 35 ILCS 200/15-145<sup>5</sup> WAS CONSTITUTIONAL AND THAT THE PROVISION GRANTING AN EXEMPTION TO A VETERAN'S ORGANIZATION REQUIRED THE ORGANIZATION'S UTILIZATION ENCOMPASS ALL THREE OF THE

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<sup>4</sup> ILL. REV. STAT. CH. 120 PARA. 500.18 (1959)

<sup>5</sup> AT THE TIME NORTH SHORE POST NO. 21 WAS DECIDED, THE EXEMPTION FOR VETERANS ORGANIZATIONS WAS FOUND AT ILL. REV. STAT. CH. 120, PAR. 500.18 (1963).

REQUIRED USES: CIVIC, PATRIOTIC, AND CHARITABLE. THE COURT WENT ON TO HOLD THAT THE APPLICANT'S USAGE OF THE PROPERTY FOR ITS MEETINGS, WEDDING RECEPTIONS, MEETINGS OF VARIOUS OTHER GROUPS, AND THE BAR MAINTAINED ON THE PREMISES PRIMARILY FOR MEMBERS, NECESSITATED A FINDING BY THE COURT THAT THE PRIMARY USE OF THE PROPERTY WAS NOT EXEMPT. THE COURT SPECIFICALLY STATED:

PLAINTIFF HAS NOT SHOWN, HOWEVER, THAT THE PRIMARY USE OF THE PREMISES WAS IN FURTHERANCE OF THESE CHARITABLE PURPOSES. THE RECORD SHOWS THAT THE PREMISES ARE USED PRIMARILY FOR THE FOLLOWING PURPOSES: MEETINGS, BOTH BUSINESS AND SOCIAL, OF THE PLAINTIFF AND ITS VARIOUS AUXILIARIES; WEDDING RECEPTIONS OF MEMBERS OF THE POST AND OF THIRD PARTIES; DINNERS AND SOCIAL PARTIES FOR PLAINTIFF AND ITS AUXILIARIES; MEETINGS OF BOY SCOUT TROOPS; MEETINGS OF OTHER VETERANS ORGANIZATIONS FOR RENTAL DONATION OF \$15; A BAR IS MAINTAINED PRIMARILY FOR MEMBERS; POOL AND BILLIARD FACILITIES ARE MAINTAINED FOR MEMBERS AND THEIR GUESTS;. . . ID. AT 235. (EMPHASIS ADDED).

THE APPLICANT HEREIN WAS GRANTED EXEMPTIONS FROM REAL ESTATE TAXES PURSUANT TO THE OPINION OF THE ATTORNEY GENERAL. THAT OPINION WAS OVERTURNED BY THE SUPREME COURT IN ROGERS PARK AND IS NO LONGER VALID LAW. THE STATUTES WERE THEN CHANGED TO ADD AN EXEMPTION FOR VETERANS ORGANIZATIONS THAT REQUIRED THE USE OF THE SUBJECT PARCEL TO BE FOR CHARITABLE PURPOSES THAT WERE ALSO CIVIC AND PATRIOTIC.

ALTHOUGH I AGREE THAT THE FOREGOING CONDITIONS SHOWN BY THE APPLICANT HEREIN ARE SLIGHTLY DISSIMILAR FROM THOSE OF THE APPLICANT IN NORTH SHORE POST NO. 21, THAT ALONE DOES NOT AUTHORIZE THE GRANTING OF A PROPERTY TAX EXEMPTION IN THIS CASE. THERE IS NO DISPUTE THAT THE APPLICANT'S ENDEAVORS ARE CERTAINLY COMMENDABLE AND BENEFIT A GREAT NUMBER OF PEOPLE. THE COURT HAS STATED, HOWEVER, THAT THE USE MUST BE CIVIC, PATRIOTIC, AND CHARITABLE.

IN BUILDING NO. 1, THE APPLICANT USES THE PROPERTY FOR SOCIAL PURPOSES WHEN IT CONDUCTS THE MEETINGS AND OTHER ACTIVITIES IT HOLDS ON THE PREMISES. BUILDING NO. 2 IS USED FOR STORAGE OF MEDICAL EQUIPMENT THAT IT LOANS TO MEMBERS OF THE



COMMUNITY AT NO CHARGE. WHILE THIS MAY BE A CHARITABLE AND/OR CIVIC USE OF THE BUILDING, THE APPLICANT HAS FAILED TO SHOW HOW THAT USAGE IS ALSO PATRIOTIC. BUILDING NO. 3 IS USED FOR STORAGE OF COOKING EQUIPMENT. STORAGE IN A BUILDING CAN ONLY QUALIFY FOR AN EXEMPTION IF IT IS RELATED TO AN EXEMPT OWNER THAT IS STORING MATERIALS RELATED TO AN EXEMPT USAGE. The Appellate Court of Illinois determined that property owned by a church and used for storage of church records and furniture qualified for a property tax exemption in Our Savior Lutheran Church v. Department of Revenue, 204 Ill.App. 3d 1055 (5<sup>th</sup> Dist. 1990) *leave to appeal denied*.

THE APPLICANT HAS FAILED TO SHOW THAT THE ACTIVITIES IT CONDUCTS IN THE THREE BUILDINGS AND PROPERTY AT ISSUE SATISFY THE THREE-PRONG TEST OF CHARITABLE, CIVIC, AND PATRIOTIC USAGE THAT THE STATUTE REQUIRES.

I THEREFORE FIND THAT NORTH SHORE POST NO. 21 IS THE CONTROLLING CASE LAW REGARDING THE STATUTORY LANGUAGE AT ISSUE AND THAT THE APPLICANT HAS FAILED ITS BURDEN OF PROOF TO QUALIFY FOR EXEMPTION.

IT IS THEREFORE RECOMMENDED THAT LOT ONE AND THE EAST FORTY FEET OF LOT TWO BLOCK TWELVE IN THE ORIGINAL TOWN OF MCLEAN REMAIN ON THE TAX ROLLS AND BE ASSESSED TO THE APPLICANT, THE OWNER THEREOF.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
February 17, 1999